

Fact Sheet: Final Rule on Treatment of Indian Tribes in a Similar Manner as States for Purposes of Section 303(d) of the Clean Water Act

Summary

In section 518(e) of the Clean Water Act (CWA), Congress authorized EPA to treat eligible federally recognized Indian tribes in a similar manner as states for purposes of administering section 303 and certain other provisions of the CWA, and directed the agency to promulgate regulations effectuating this authorization. EPA has issued regulations establishing a process for federally recognized tribes to obtain treatment in a similar manner as states (TAS) for several provisions of the CWA; 53 tribes, for example, have obtained TAS authority to issue water quality standards under CWA section 303(c). EPA, however, had not yet promulgated regulations expressly establishing a process for such tribes to obtain TAS authority to administer the water quality restoration provisions of CWA section 303(d), including issuing lists of impaired waters and developing total maximum daily loads (TMDLs) under CWA section 303(d), as states routinely do.

EPA has now remedied this gap. By establishing regulatory procedures for eligible tribes to obtain TAS for the CWA Section 303(d) Impaired Water Listing and TMDL Program, the rule enables eligible tribes to obtain authority to identify impaired waters on their reservations and to establish TMDLs, which serve as plans for attaining and maintaining applicable water quality standards (WQS). The rule is comparable to similar regulations that EPA issued in the 1990s for the CWA Section 303(c) WQS and CWA Section 402 and Section 404 Permitting Programs, and includes features designed to minimize paperwork and unnecessary reviews.

Background

CWA section 518 provides that eligible tribes may seek TAS for CWA section 303; however, existing regulations did not explicitly address how tribes obtain TAS for the 303(d) Program. Section 518 requires EPA to establish procedures for tribes to obtain TAS for the various CWA programs. Regulations are already in place expressly establishing a TAS process for most of the other CWA programs available to tribes.

EPA conducted pre-proposal tribal consultation and coordination with intergovernmental associations and member states, and engaged in further consultation and coordination with tribes and states after the rule was proposed.

This rule to establish a TAS process for the 303(d) Program is separate from the Agency's rulemaking regarding a new approach to tribal jurisdiction to administer CWA regulatory programs, "Revised Interpretation of Clean Water Act Tribal Provision," that was finalized on May 15, 2016.

Highlights of the Rule

Subjects addressed within the rule include:

- The statutory and regulatory history of TAS under the CWA.
- Reasons a tribe might be interested in seeking TAS for the 303(d) Program.
- Program responsibilities tribes would have upon obtaining TAS for the 303(d) Program.
- Regulatory procedures for a tribe to seek TAS for the 303(d) Program.
- Special circumstances that may exist regarding qualification for TAS for the 303(d) Program.
- Regulatory procedure EPA would follow in reviewing a tribe's TAS application.
- Expectations regarding WQS and WQS TAS as prerequisites for 303(d) TAS.
- Availability of EPA financial and technical support to tribes that choose to develop and implement a 303(d) program.

For Further Information

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Further information on this rule is also available at <http://www.epa.gov/tmdl/tribal-consultation-rulemaking-provide-more-opportunities-tribes-engage-clean-water-act>.